

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KALOM MCCOY,

Petitioner,

v.

GENA JONES, Warden,

Respondent.

No. 2:23-cv-0902 DAD CSK P

ORDER

Petitioner, a state prisoner, proceeds through counsel with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

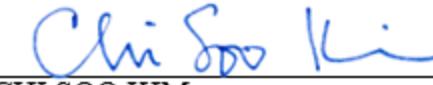
On April 17, 2024, this action was stayed pending exhaustion of state court remedies with respect to petitioner's ineffective assistance of counsel claim pursuant to *Kelly v. Small*, 316 F.3d 1063 (9th Cir. 2003). (ECF No. 21.) On February 27, 2025, petitioner filed a motion to lift stay and asked the Court to direct petitioner to file a second amended petition. Good cause appearing, the stay of this action is lifted, and petitioner is granted thirty days to file a second amended federal petition containing all exhausted grounds. Petitioner's arguments concerning relation back are premature and will not be addressed at this juncture.

Accordingly, IT IS HEREBY ORDERED that:

1. Petitioner's motion to lift the stay of this action (ECF No. 22) is granted.

- 1 2. The stay of this action is lifted (ECF No. 21).
- 2 3. The Clerk of the Court is directed to re-open this action.
- 3 4. Petitioner is granted fifteen days to file a second amended petition raising all exhausted
- 4 claims.
- 5 5. Sixty days after petitioner files the second amended petition, respondent shall file a
- 6 response. See Rule 4, 28 U.S.C. foll. § 2254. An answer shall be accompanied by all transcripts
- 7 and other documents relevant to the issues presented in the petition. See Rule 5, 28 U.S.C. foll.
- 8 § 2254.
- 9 6. If the response to the second amended habeas petition is an answer, petitioner's reply,
- 10 if any, shall be filed and served within thirty days after service of the answer.
- 11 7. If the response to the second amended habeas petition is a motion, petitioner's
- 12 opposition or statement of non-opposition to the motion shall be filed and served within thirty
- 13 days after service of the motion, and respondent's reply, if any, shall be filed and served within
- 14 fourteen days thereafter

15 Dated: April 1, 2025

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17 CHI SOO KIM

18 UNITED STATES MAGISTRATE JUDGE

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